IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 89 OF 2000

Smt. Jijabai Shankar Jadhav & ors. ... Appellants

V/s

Smt. Shantabai Shripati Gatkal & anr. ... Respondents

Shri Hardas holding for P.N. Joshi for the appellants.

Shri S. M. Sahastrabuddhe holding for G.S. Godbole for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 21ST OCT., 2004.

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. This is an appeal filed by the unsuccessful defendants throughout against the judgment and order passed by the Extra Joint District Judge, Nasik, dismissing the appeal on 25.1.1999 and confirming the order passed by the Joint Civil Judge, Sr. Divn., Nasik decreeing the suit for specific performance.

3. Both the Courts below have recorded concurrent

findings to the effect that the plaintiffs were entitled to specific performance of the contract between the parties executed by the agreement of sale dated 16.1.1985 and found that possession of the suit property was handed over to the plaintiffs at the foot of the said contract of respective earnest money of Rs.20,000/- by the defendants. The suit against the defendant No.9 came to be dismissed and further it was directed that the plaintiffs should deposit the amount of Rs.1500/- and complete the transaction between the parties by executing the sale deed.

The only question of law sought to be raised on behalf of the appellants is to the effect that, both the Courts below have not appreciated the evidence properly while putting the burden to prove the defendants' defence that no consideration was passed at the time of the said agreement. However, in this regard, it must be noted that the suit agreement is admittedly executed between the parties. Defendants 1 to 4 did not challenge the suit and as such the suit proceeded ex-parte against them. Defendants 5 to 8 filed their written statement raising contention to the effect that the deceased Shankar wanted to sale the suit property for the marriage of his daughter Shobha and he was in need of

money and, therefore, the agreement was executed but the amount of Rs.2000/- was received by Shankar Jadhav and it was promised that Rs.20,000/- would be paid at the time of marriage of defendant No.4 Shobha. In other words, it is the case sought to be made by the defendants that no consideration as mentioned in the suit agreement was passed as alleged and, therefore, the suit contract is void ab initio. However, it must be noted that, in the light of the fact that execution of the suit agreement was admitted and possession of the suit property was handed over to the plaintiff at the foot of the suit transaction, both the Courts below have come to the conclusion that the evidence of the defendants was not sufficient to hold that no consideration was passed at the time of suit agreement. As is seen from the record, both the Courts below have properly appreciated the evidence on record and, therefore, it cannot be said that the reasoning adopted and findings recorded by both the Courts below are perverse in nature in any manner whatsoever.

4. In the case of **Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar, reported A.I.R. 1999 SCC 2213,** the Apex Court has observed that conditions mentioned in Sec. 100 of C.P.C. must be strictly fulfilled before a

second appeal can be maintained and no Court has the power to add to or enlarge those grounds. The concurrent findings of facts, howsoever erroneous, cannot be disturbed by the High Court in exercise of the powers under this section and it is not within the domain of the High Court to investigate the ground in which the findings are arrived at by the last Court of fact being the first appellate Court.

In the present case before us, this ratio fits in properly especially when it is seen that the Courts below have acted correctly and properly on the basis of available evidence.

In the result, the appeal stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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